

Message

From: Leifer, Kerry [Leifer.Kerry@epa.gov]
Sent: 4/15/2021 2:31:58 PM
To: OPP RD CITAB [OPP_RD_CITAB@epa.gov]; Okeke, Ugochukwu [Okeke.Ugochukwu@epa.gov]; Baker, Brandon [Baker.Brandon@epa.gov]; Mohamedelhassan, Mohamed [mohamedelhassan.mohamed@epa.gov]
Subject: FW: [news] Bloomberg Law article

Kerry Leifer, Chief
Chemistry, Inerts and Toxicology Assessment Branch
Registration Division (7505P)
Office of Pesticide Programs
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460
tel: (703) 308-8811
fax: (703) 605-0781

e-mail: leifer.kerry@epa.gov

From: Aubee, Catherine
Sent: Thursday, April 15, 2021 9:52 AM
To: Leifer, Kerry <Leifer.Kerry@epa.gov>; Nesci, Kimberly <Nesci.Kimberly@epa.gov>; Echeverria, Marietta <Echeverria.Marietta@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Lara, Rhina <Lara.Rhina@epa.gov>; Ozmen, Shamus <Ozmen.Shamus@epa.gov>; O'Neill, Sandra <ONeill.Sandra@epa.gov>; Picone, Kaitlin <Picone.Kaitlin@epa.gov>
Cc: Saunders, Jennifer <Saunders.Jennifer@epa.gov>
Subject: [news] Bloomberg Law article

For awareness: SFIREG article. I think it's reasonably balanced. I didn't see it in the news blast yesterday – thanks to Jenn for sending the link.
Catherine

<https://news.bloomberglaw.com/environment-and-energy/better-pfas-definition-needed-by-epa-states-tell-agency>

Clear PFAS Definition Needed by EPA, States Tell Agency (1)

April 13, 2021, 3:59 PM; Updated: April 13, 2021, 6:33 PM

- Varied PFAS definitions used by different EPA offices
- Determines what is, isn't covered by laws, rules

The EPA doesn't have a single agency-wide definition of per- and polyfluoroalkyl substances, or PFAS, which is prompting state officials to push it to adopt one.

Different Environmental Protection Agency offices are using different working definitions of PFAS, Catherine Aubee, an EPA pesticide registration officer, told state officials during a two-day online pesticide conference.

"We're trying to see what they mean and see if we can reach a common definition for different programs and what it means for pesticides," she said.

An agency "master list" of PFAS compounds contains more than 9,200 chemicals, but says: "There is no precisely clear definition of what constitutes a PFAS substance given the inclusion of partially fluorinated substances, polymers, and ill-defined reaction products on these various lists."

The list, compiled from numerous sources with an array of definitions, is designed for research and development—not as authoritative source for regulations, Aubee said.

The absence of an EPA-wide definition became apparent as the pesticide office tackled the mysterious discovery of PFAS in some mosquito-control products even though the chemicals detected were not approved as pesticide ingredients, said Kerry Leifer, a branch chief within EPA's pesticides office.

State pesticide regulators need a consistent federal definition, which would help them determine what products could be banned through state legislation, Megan Patterson, pesticides director within Maine's Department of Agriculture, Conservation and Forestry, said Tuesday.

'One of the Biggest Questions'

PFAS are the target of growing regulations in the states as well as internationally. Some—including perfluorooctane sulfonate, or PFOS, perfluorooctanoic acid, or PFOA—simply don't break down in the environment. They linger in people's bodies and are linked with problems including weakened immune systems and cancer.

A Maine legislative committee is set this week to discuss a bill, L.D. 264, that would ban aerial spraying of pesticides containing PFAS. The measure defines the chemicals broadly as "any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom."

That definition differs from the one the EPA's pesticide office has been using, Leifer said. It initially defined PFAS as compounds with known toxicities such as PFOS, PFOA and GenX, or hexafluoropropylene oxide dimer acid and its ammonium salt, he said.

The agency-wide discussion may change that, said Kimberly Nesci, a division director in EPA's pesticide office. The EPA's chemicals, water, and research and development offices also are weighing in, she said.

EPA's definition of PFAS "is one of the biggest questions we need answered so we can move forward and know what we're dealing with," said Amy Sullivan, executive secretary for the State FIFRA Issues Research and Evaluation Group (SFIREG), which hosted the meeting on Monday and Tuesday to discuss a range of pesticide issues.

FIFRA, the Federal Insecticide, Fungicide, and Rodenticide Act, covers pesticides.

'Emerging' Challenges

The lack of uniformity in how PFAS are defined can lead to major problems, said Eve Gartner, an attorney with Earthjustice, a nonprofit public interest law organization.

“There are concerns about differing definitions of PFAS within EPA, across the federal government, and also between states, and between states and the federal government,” she said.

The lack of a common definition “is one of the challenges with an emerging contaminant,” said Allyson Cunningham, a partner in the environmental and tort practice group in Lathrop GPM LLP’s Kansas City, Mo., office. “The agency is both trying to regulate while the science is still catching up with the contaminant,” she said.

Trade associations representing and attorneys advising chemical and pesticide makers said a single definition won’t work. PFAS are a “large and diverse universe of chemistries” so a single definition or grouping is inappropriate,” Megan J. Provost, president of RISE, which represents pesticide manufacturers, distributors and others, said in an email.

The American Chemistry Council, which represents chemical manufacturers, supported an approach in a 2011 [scientific journal](#), said spokesman Tom Flanagan. The approach divides PFAS into categories with common characteristics. ACC is working with state and federal lawmakers on definitions that could be included in legislative text, he said.

The EPA should accept the definition of PFAS from the Organization for Economic Cooperation and Development that other countries are using, said Kyla Bennett, director of New England’s Public Employees for Environmental Responsibility, which alerted the EPA last year to the presence of PFAS in pesticides.

“While PFAS chemistry and nomenclature is complicated, we must remember that we are dealing with human health issues, and as such, EPA should invoke the precautionary principal,” Bennett said. “The only solution is to regulate them all as a class.”

(Updated with additional reporting throughout.)

To contact the reporter on this story: Pat Rizzuto in Washington at prizzuto@bloombergindustry.com

To contact the editors responsible for this story: Rebecca Baker at rbaker@bloombergindustry.com; Gregory Henderson at ghenderson@bloombergindustry.com



Pat Rizzuto

Reporter

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